

AMENDED IN SENATE MARCH 12, 2015

**SENATE BILL**

**No. 122**

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**Introduced by Senators ~~Jackson, Hill, and Roth~~ *Jackson and Hill***

January 15, 2015

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An act to amend Section 21167.6 of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Jackson. California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require the lead agency, at the request of a project applicant and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, EIR, or other environmental document for projects.

(2) The bill would state the intent of the Legislature to enact legislation establishing an electronic database clearinghouse of notices and environmental-~~document~~ *documents* prepared pursuant to CEQA, establishing a public review period for a final environmental impact report, and relating to the record of proceedings for a project for which an environmental impact report is prepared pursuant to CEQA.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21167.6 of the Public Resources Code  
2 is amended to read:

3 21167.6. Notwithstanding any other law, in all actions or  
4 proceedings brought pursuant to Section 21167, except as provided  
5 in Section 21167.6.2 or those involving the Public Utilities  
6 Commission, all of the following shall apply:

7 (a) At the time that the action or proceeding is filed, the plaintiff  
8 or petitioner shall file a request that the respondent public agency  
9 prepare the record of proceedings relating to the subject of the  
10 action or proceeding. The request, together with the complaint or  
11 petition, shall be served personally upon the public agency not  
12 later than 10 business days from the date that the action or  
13 proceeding was filed.

14 (b) (1) The public agency shall prepare and certify the record  
15 of proceedings not later than 60 days from the date that the request  
16 specified in subdivision (a) was served upon the public agency.  
17 Upon certification, the public agency shall lodge a copy of the  
18 record of proceedings with the court and shall serve on the parties  
19 notice that the record of proceedings has been certified and lodged  
20 with the court. The parties shall pay any reasonable costs or fees  
21 imposed for the preparation of the record of proceedings in  
22 conformance with any law or rule of court.

23 (2) The plaintiff or petitioner may elect to prepare the record  
24 of proceedings or the parties may agree to an alternative method  
25 of preparation of the record of proceedings, subject to certification  
26 of its accuracy by the public agency, within the time limit specified  
27 in this subdivision.

28 (c) The time limit established by subdivision (b) may be  
29 extended only upon the stipulation of all parties who have been

1 properly served in the action or proceeding or upon order of the  
2 court. Extensions shall be liberally granted by the court when the  
3 size of the record of proceedings renders infeasible compliance  
4 with that time limit. There is no limit on the number of extensions  
5 that may be granted by the court, but no single extension shall  
6 exceed 60 days unless the court determines that a longer extension  
7 is in the public interest.

8 (d) If the public agency fails to prepare and certify the record  
9 within the time limit established in paragraph (1) of subdivision  
10 (b), or any continuances of that time limit, the plaintiff or petitioner  
11 may move for sanctions, and the court may, upon that motion,  
12 grant appropriate sanctions.

13 (e) The record of proceedings shall include, but is not limited  
14 to, all of the following items:

15 (1) All project application materials.

16 (2) All staff reports and related documents prepared by the  
17 respondent public agency with respect to its compliance with the  
18 substantive and procedural requirements of this division and with  
19 respect to the action on the project.

20 (3) All staff reports and related documents prepared by the  
21 respondent public agency and written testimony or documents  
22 submitted by any person relevant to any findings or statement of  
23 overriding considerations adopted by the respondent agency  
24 pursuant to this division.

25 (4) Any transcript or minutes of the proceedings at which the  
26 decisionmaking body of the respondent public agency heard  
27 testimony on, or considered any environmental document on, the  
28 project, and any transcript or minutes of proceedings before any  
29 advisory body to the respondent public agency that were presented  
30 to the decisionmaking body prior to action on the environmental  
31 documents or on the project.

32 (5) All notices issued by the respondent public agency to comply  
33 with this division or with any other law governing the processing  
34 and approval of the project.

35 (6) All written comments received in response to, or in  
36 connection with, environmental documents prepared for the project,  
37 including responses to the notice of preparation.

38 (7) All written evidence or correspondence submitted to, or  
39 transferred from, the respondent public agency with respect to  
40 compliance with this division or with respect to the project.

1 (8) Any proposed decisions or findings submitted to the  
2 decisionmaking body of the respondent public agency by its staff,  
3 or the project proponent, project opponents, or other persons.

4 (9) The documentation of the final public agency decision,  
5 including the final environmental impact report, mitigated negative  
6 declaration, or negative declaration, and all documents, in addition  
7 to those referenced in paragraph (3), cited or relied on in the  
8 findings or in a statement of overriding considerations adopted  
9 pursuant to this division.

10 (10) Any other written materials relevant to the respondent  
11 public agency's compliance with this division or to its decision on  
12 the merits of the project, including the initial study, any drafts of  
13 any environmental document, or portions thereof, that have been  
14 released for public review, and copies of studies or other documents  
15 relied upon in any environmental document prepared for the project  
16 and either made available to the public during the public review  
17 period or included in the respondent public agency's files on the  
18 project, and all internal agency communications, including staff  
19 notes and memoranda related to the project or to compliance with  
20 this division.

21 (11) The full written record before any inferior administrative  
22 decisionmaking body whose decision was appealed to a superior  
23 administrative decisionmaking body prior to the filing of litigation.

24 (f) In preparing the record of proceedings, the party preparing  
25 the record shall strive to do so at reasonable cost in light of the  
26 scope of the record.

27 (g) The clerk of the superior court shall prepare and certify the  
28 clerk's transcript on appeal not later than 60 days from the date  
29 that the notice designating the papers or records to be included in  
30 the clerk's transcript was filed with the superior court, if the party  
31 or parties pay any costs or fees for the preparation of the clerk's  
32 transcript imposed in conformance with any law or rules of court.  
33 Nothing in this subdivision precludes an election to proceed by  
34 appendix, as provided in Rule 8.124 of the California Rules of  
35 Court.

36 (h) Extensions of the period for the filing of any brief on appeal  
37 may be allowed only by stipulation of the parties or by order of  
38 the court for good cause shown. Extensions for the filing of a brief  
39 on appeal shall be limited to one 30-day extension for the  
40 preparation of an opening brief, and one 30-day extension for the

1 preparation of a responding brief, except that the court may grant  
2 a longer extension or additional extensions if it determines that  
3 there is a substantial likelihood of settlement that would avoid the  
4 necessity of completing the appeal.

5 (i) At the completion of the filing of briefs on appeal, the  
6 appellant shall notify the court of the completion of the filing of  
7 briefs, whereupon the clerk of the reviewing court shall set the  
8 appeal for hearing on the first available calendar date.

9 SEC. 2. Section 21167.6.2 is added to the Public Resources  
10 Code, to read:

11 21167.6.2. (a) (1) Notwithstanding Section 21167.6, upon  
12 the written request of a project applicant received no later than 30  
13 days after the date that the lead agency makes a determination  
14 pursuant to subdivision (a) of Section 21080.1, Section 21094.5,  
15 or Chapter 4.2 (commencing with Section 21155) and with the  
16 consent of the lead agency as provided in subdivision (e), the lead  
17 agency shall prepare and certify the record of proceedings in the  
18 following manner:

19 (A) The lead agency for the project shall prepare the record of  
20 proceedings pursuant to this division concurrently with the  
21 administrative process.

22 (B) All documents and other materials placed in the record of  
23 proceedings shall be posted on, and be downloadable from, an  
24 Internet Web site maintained by the lead agency commencing with  
25 the date of the release of the draft environmental document for the  
26 project. If the lead agency cannot maintain an Internet Web site  
27 with the information required pursuant to this section, the lead  
28 agency shall provide a link on the agency's Internet Web site to  
29 that information.

30 (C) The lead agency shall make available to the public in a  
31 readily accessible electronic format the draft environmental  
32 document for the project, and all other documents submitted to,  
33 cited by, or relied on by the lead agency, in the preparation of the  
34 draft environmental document for the project.

35 (D) A document prepared by the lead agency or submitted by  
36 the applicant after the date of the release of the draft environmental  
37 document for the project that is a part of the record of the  
38 proceedings shall be made available to the public in a readily  
39 accessible electronic format within 5 business days after the  
40 document is released or received by the lead agency.

1 (E) The lead agency shall encourage written comments on the  
2 project to be submitted in a readily accessible electronic format,  
3 and shall make any comment available to the public in a readily  
4 accessible electronic format within 5 business days of its receipt.

5 (F) Within 7 business days after the receipt of any comment  
6 that is not in an electronic format, the lead agency shall convert  
7 that comment into a readily accessible electronic format and make  
8 it available to the public in that format.

9 (G) The lead agency shall certify the record of proceedings  
10 within 30 days after the filing of the notice required pursuant to  
11 Section 21108 or 21152.

12 (2) This subdivision does not require the disclosure or posting  
13 of any trade secret as defined in Section 6254.7 of the Government  
14 Code, information about the location of archaeological sites or  
15 sacred lands, or any other information that is subject to the  
16 disclosure restrictions of Section 6254 of the Government Code.

17 (b) Any dispute regarding the record of proceedings prepared  
18 pursuant to this section shall be resolved by the court in an action  
19 or proceeding brought pursuant to subdivision (b) or (c) of Section  
20 21167.

21 (c) The content of the record of proceedings shall be as specified  
22 in subdivision (e) of Section 21167.6.

23 (d) The negative declaration, mitigated negative declaration,  
24 draft and final environmental impact report, or other environmental  
25 document shall include a notice in no less than 12-point type stating  
26 the following:

27  
28 “THIS DOCUMENT IS SUBJECT TO SECTION 21167.6.2  
29 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES  
30 THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO  
31 BE PREPARED CONCURRENTLY WITH THE  
32 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED  
33 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE  
34 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,  
35 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN  
36 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE  
37 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC  
38 FORMAT.”  
39

1 (e) (1) The lead agency shall respond to a request by the project  
2 applicant within 10 business days from the date that the request  
3 pursuant to subdivision (a) is received by the lead agency.

4 (2) A project applicant and the lead agency may mutually agree,  
5 in writing, to extend the time period for the lead agency to respond  
6 pursuant to paragraph (1), but they shall not extend that period  
7 beyond the commencement of the public review period for the  
8 proposed negative declaration, mitigated negative declaration,  
9 draft environmental impact report, or other environmental  
10 document.

11 (3) The request to prepare a record of proceedings pursuant to  
12 this section shall be deemed denied if the lead agency fails to  
13 respond within 10 business days of receiving the request or within  
14 the time period agreed upon pursuant to paragraph (2), whichever  
15 ends later.

16 (f) The written request of the applicant submitted pursuant to  
17 subdivision (a) shall include an agreement to pay all of the lead  
18 agency's costs of preparing and certifying the record of proceedings  
19 pursuant to this section and complying with the requirements of  
20 this section, in a manner specified by the lead agency.

21 (g) The costs of preparing the record of proceedings pursuant  
22 to this section and complying with the requirements of this section  
23 are not recoverable costs pursuant to Section 1033 of the Code of  
24 Civil Procedure.

25 (h) Pursuant to subdivision (f) and Section 21089, the lead  
26 agency may charge and collect a reasonable fee from the person  
27 making the request pursuant to subdivision (a) to recover the costs  
28 incurred by the lead agency in preparing the record of proceedings  
29 pursuant to this section.

30 SEC. 3. It is the intent of the Legislature to enact legislation  
31 establishing an electronic database clearinghouse managed by the  
32 Office of Planning and Research—~~containing~~ of notices and  
33 documents required to be prepared pursuant to the California  
34 Environmental Quality Act (Division 13 (commencing with Section  
35 21000) of the Public Resources Code).

36 SEC. 4. It is the intent of the Legislature to enact legislation  
37 establishing a public review period for a final environmental impact  
38 report prepared pursuant to, and relating to the record of  
39 proceedings for a project for which an environmental impact report  
40 is prepared pursuant to, the California Environmental Quality Act

- 1 (Division 13 (commencing with Section 21000) of the Public
- 2 Resources Code).

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